

BETWEEN:

LELAND PUBLISHING COMPANY } APPELLANT;  
LIMITED, ..... }

1957  
Dec. 16  
1958  
Feb. 26

AND

THE DEPUTY MINISTER OF NA- } RESPONDENT.  
TIONAL REVENUE FOR CUS- }  
TOMS AND EXCISE ..... }

*Revenue—Customs Duty—Encyclopedia, liability to tax—Meaning of books “for the promotion of”—Tariff Board, Appeal from on question of law—The Customs Tariff, R.S.C. 1952, c. 60, Schedule “A”, Tariff Items 171, 172—Customs Act, R.S.C. 1952, c. 58, s. 45.*

The appellant in 1955 imported into Canada the *New Pictorial Encyclopedia* and the *Universal Standard Encyclopedia*. Both sets of books were classified by the respondent as dutiable under Tariff Item 171 of the *Customs Tariff*, R.S.C. 1952, c. 60. The appellant appealed to the Tariff Board contending that the books should have been admitted duty free under Tariff Item 172: “Books . . . for the promotion of religion, medicine and surgery, the fine arts, law, science, technical training and the study of languages, not including dictionaries”. The Board dismissed the appeal. It found that the encyclopedias were essentially what they purported to be: general works of reference. They were not, and did not purport to be, more than incidentally related to any one of the specialized fields of learning mentioned in the particular item or to any combination of these fields. In particular they were not designed principally or particularly “for the promotion” of the fields of learning mentioned in the item.

The appellant appealed, pursuant to leave, upon the question—“Did the Tariff Board err as a matter of law in deciding that the *New Pictorial Encyclopedia* and the *Universal Standard Encyclopedia* were not properly classifiable under *Customs Tariff* Item 172?”. The appellant’s submission was that the words of item 172 were to be construed in their natural and normal sense and that in determining that the books were not designed principally or particularly for the promotion of the fields of learning mentioned in the item the Board had applied a test not warranted by the Statute.

*Held:* That in determining whether or not a book is to be classified under item 172 as a book for the promotion of one or more of the fields of learning mentioned in the item, the fact that a book may promote or tend to promote in one way or another one or more of the fields is inconclusive, and that where a book is only incidentally concerned with one or more of such fields, it is not a book for the promotion of such fields within the meaning of the item.

2. That although the declaration of the Board did not include an express statement of its interpretation of item 172, it was to be concluded from its finding and judgment that it was not misdirected by an erroneous interpretation of the item.

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3. That if it could be said there was some error in the Board's interpretation, it followed as a matter of law from the finding that the books in question were not more than incidentally related to any one or more of the fields of learning mentioned in the item, that they could not be regarded as books *for the promotion of* such fields within the meaning of the item and therefore could not be properly classified under it.

APPEAL under the *Customs Act* from a decision of the Tariff Board.

The appeal was heard before the Honourable Mr. Justice Thurlow at Ottawa.

*J. C. Horwitz, Q.C.* for appellant.

*R. W. McKimm* for respondent.

The facts and questions of law raised are stated in the reasons for judgment.

THURLOW J. now (February 26, 1958) delivered the following judgment:

This is an appeal under s. 45 of the *Customs Act*, R.S.C. 1952, c. 58, from a declaration of the Tariff Board made on June 14, 1957 in appeal No. 397. The appeal is taken pursuant to leave, granted by the President of this Court, to appeal upon the question, "Did the Tariff Board err as a matter of law in deciding that the *New Pictorial Encyclopedia* and the *Universal Standard Encyclopedia* imported by Leland Publishing Co. Ltd. were not properly classifiable under Customs Tariff item 172?"

At the time of the importations to which the appeal relates, item 172 designated as free of customs duty, *inter alia*:

books, pamphlets and reports, *for the promotion of* religion, medicine and surgery, the fine arts, law, science, technical training, and the study of languages, not including dictionaries.

The two works mentioned in the question on which the appeal is taken are sets of books containing articles on a wide range of subjects. Each work includes articles dealing with subjects related in one way or another to the several fields of learning or knowledge mentioned in item 172, but neither work is restricted to nor principally concerned with the subject matter of any one or more of such fields.

The *New Pictorial Encyclopedia* is a set of 18 volumes containing short articles, with one or more pictures illustrating the subject of each of such articles. The scope and purpose of this work are described as follows in its Foreword:

It is a *complete* encyclopedia—a ready reference work which should be the *first* book we should turn to in order to get the accurate and adequate first-hand knowledge we seek. Other encyclopedias may add a greatly increased amount of detailed information and should be used when such is required. The thorough exploration of a vast area of knowledge has been included in such encyclopedias for the benefit of the scholar who may be writing a Ph.D. Thesis but the *NEW PICTORIAL* will even be valuable to scholars for it will point the way to the unraveling of the subject, carefully avoiding the non-essential details which often clutter the pages of so-called “ready-reference” works.

\* \* \* \*

When a word is used, a person mentioned, a place referred to, a subject discussed, where do you go to find out about it? Yes, to a person who knows, a library, or an adequate book of reference. You would like to be certain that wherever you go is an authoritative source, an unbiased medium of information, an honest help which can, in as few words as possible, give you the answers. This is the need that the *NEW PICTORIAL* has been planned to meet.

The *Universal Standard Encyclopedia* is a larger work, containing fewer pictures and purporting to be an abridgment in 25 volumes of a 36-volume work known as *The New Funk & Wagnalls Encyclopedia*. The first paragraph of its Foreword is as follows:

An encyclopedia is meant to be exactly what the ancient roots of the word indicate: the entire circle of education, of human learning. Think, then, how fantastically difficult is the task of compiling a modern, streamlined, truly American encyclopedia—of compressing all the knowledge in all the books of the world into a practical, *usable* number of pages, and of making that vast store of learning understandable to Americans of every condition everywhere. Yet this was our task and here is the result, twenty-five handsomely bound and printed volumes, nearly ten thousand double-columned pages, nearly six million words in more than thirty thousand separate articles.

After reviewing the preparation of the work and the way in which the larger work has been abridged, the Foreword refers to the volumes of the set as follows:

They still comprise as authoritative, accurate, and comprehensive a work as you are likely to need for ready reference. To all this must be added the fact that many articles have undergone still further revision, that all articles are as up to date as the time of printing permits, and that, in quest of the same up-to-dateness, many new articles have been

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added. All in all, we believe you will discover this set to be at least as useful—and usable—as any other encyclopedia you can purchase at any price.

Both the *New Pictorial Encyclopedia* and the *Universal Standard Encyclopedia* are inexpensive sets of books, the former being priced at less than \$18 and the latter at less than \$25. They are marketed systematically through retail grocery chain stores.

On five occasions in 1955 to which the present appeal relates, books of these sets, on being imported into Canada by the appellant, were classified by the Deputy Minister of National Revenue for Customs and Excise as dutiable under Tariff item 171 of Schedule A of the *Customs Tariff Act* R.S.C. 1952, c. 60. This item provided for

Books, printed, periodicals and pamphlets, or parts thereof, n. o. p., not to include blank account books, copy books, or books to be written or drawn upon.

From the decision of the Deputy Minister, classifying the books under this item, the appellant appealed to the Tariff Board, contending that these encyclopedias are books *for the promotion of* the fields mentioned in Tariff item 172 and should be classified under that item. The Board, after hearing evidence and argument, unanimously dismissed the appeal and, in so doing, found as follows:

After examining these works and considering the arguments and evidence presented it is our opinion that these encyclopaedias are essentially what they purport to be: general works of reference. They contain short and readily comprehensible articles designed to inform the general reader on almost any subject in which he may have a general and non-specialized interest. They are designed to help the user to become a generally well-informed person. *They are not*, and do not purport to be, *more than incidentally related to any one of the specialized fields of learning mentioned in the item or to any combination of these fields*. In particular they are not designed *principally or particularly* “for the promotion” of the fields of learning mentioned in the item.

Accordingly, the appeal is dismissed.

The question upon which the appeal to this Court is taken is similar in form to that considered in *Canadian Lift Truck Co. Ltd. v. Deputy Minister of National Revenue for Customs and Excise*<sup>1</sup>. In that case Kellock J.,

in delivering the unanimous judgment of the Supreme Court of Canada, said at p. 498:

The question of law above propounded involves at least two questions, namely, the question as to whether or not the Tariff Board was properly instructed in law as to the construction of the statutory items, and the further question as to whether or not there was evidence which enabled the Board, thus instructed, to reach the conclusion it did.

The appellant's contention on the hearing of the appeal to this Court raises a question of the first kind mentioned by Kellock J. in the passage above quoted. It was submitted that, in their natural and normal sense, the words of item 172 mean that, if a series of volumes or individual volumes will promote any one or more of the subjects mentioned in the item, such volumes are properly classified under it, that there is no justification for reading into the item any limitation upon this meaning, and that, in determining that the books in question are not designed *principally or particularly* for the promotion of the fields of learning mentioned in item 172, the Tariff Board applied a test which was not warranted by the statute. This is in substance a submission that the Board was not properly instructed in law as to the construction of the statutory item in question.

In my opinion, the words *for the promotion of* in item 172 have no special technical meaning in the context in which they appear but are used in their ordinary sense. I regard the word "promotion" as wide enough to include the promotion of the fields mentioned in the item by the dissemination of present knowledge to greater numbers of people, as well as to the promotion of such fields by stimulating research and further development in them. But I cannot agree with the submission that, in their ordinary sense, the words *for the promotion of* pose no question but that of whether or not the book in question promotes or tends to promote or is capable of promoting one or more of the fields mentioned in the item. If it does so apply, practically any book will fall within its classification, for no matter how small the contribution of any book to promotion of such fields may be, and no matter how much its treatment of subjects pertaining to such fields may be mixed with and outnumbered by subjects pertaining to other fields, it will still meet the test. The statement that a book

<sup>1</sup>[1956] 1 D.L.R. (2d) 497.

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will or will not promote any one or more of the fields mentioned in item 172 or is capable or incapable of promoting any of them is inconclusive on the question whether or not it is a book *for the promotion of* such fields, for I think it is clear that a book may promote to some extent one or more of the fields without falling fairly within the meaning and intention of the expression *for the promotion of* such field or fields. In my opinion, the question whether or not a book is one *for the promotion of* any of the fields mentioned in item 172 is to be resolved by considering not only the question whether or not it in fact promotes or tends to promote or is capable of promoting any of them but by the answer to that question and by the answer to the further question, "Is the subject matter with which the book is principally concerned related to one or more of the fields mentioned or does the book deal with subjects related to such fields only incidentally as part of a larger or different principal subject?" If the book is only incidentally concerned with one or more of the fields or subjects related to them, in my opinion it is not a book *for the promotion of* them within the meaning of the item.

The declaration of the Tariff Board does not include an express statement of its interpretation of item 172, but I think it is apparent from the Board's findings and judgment that the interpretation above set out is the interpretation which the Board in fact applied. If this conclusion is correct, it follows that the Board was not misdirected by an erroneous interpretation of the statutory item. But even if, contrary to this view, it can be said that there was some error in the Board's interpretation of the item, in my opinion it follows, as a matter of law, from the finding that the books in question are not more than incidentally related to any one or more of the fields of learning mentioned in the item, that they cannot be regarded as books *for the promotion of* such fields within the meaning of the item and, therefore, cannot properly be classified under it. This finding by the Board is one of fact, it is

amply supported by the evidence, and no ground has been shown for setting it aside. The answer to the question for determination on this appeal is, accordingly, "No."

The appeal will be dismissed with costs.

*Judgment accordingly.*

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